

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

STEPHEN GILL and
MICHELLE GILL,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

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C.A. NO.: 05-10309-MLW

**UNITED STATES’S MOTION TO DISMISS
OR IN THE ALTERNATIVE FOR A STAY**

Pursuant to Federal Rule of Civil Procedure 12(b)(1), the United States of America respectfully moves that this Court dismiss the Complaint in this case. In the alternative, the government moves that this matter be stayed pending submission of a claim under the Federal Employees’ Compensation Act to the United States Department of Labor’s Office of Workers’ Compensation Programs and a resolution of that claim by the U.S. Department of Labor. The government also moves to dismiss, or in the alternative to transfer, under Federal Rule of Civil Procedure 12(b)(3) for improper venue.¹

¹ As the government also states in its Memorandum of Law, it files this narrow Motion to conserve judicial resources. There are numerous other grounds for dismissal, e.g., plaintiffs’ claims are not cognizable under the Federal Torts Claims Act, and the government reserves its rights to address additional defenses at the appropriate time. Because the matter should, at the very least, be stayed pending submission and resolution of a Federal Employees’ Compensation Act claim, the Court need not decide any other issue at this time.

A Memorandum in Support of this Motion is filed herewith.²

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

/s/Eugenia M. Carris
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May 20, 2005

L.R. 7.1 Certification

I certify that I conferred with plaintiff's counsel regarding the relief sought herein and was unable to resolve or narrow the issues presented by this Motion.

/s/Eugenia M. Carris
Eugenia M. Carris

Certificate of Service

This is to certify that a true copy of the foregoing was served by first-class mail on May 20, 2005, upon plaintiffs' counsel, Timothy Morgan, Esq., 33 College Hill Road, Suite 16G, Warwick, RI 02886. Pro se plaintiff Stephen D. Gill, Esq. will receive ECF notification only.

/s/Eugenia M. Carris
Eugenia M. Carris

²The government will not file a separate response to plaintiff's Rule 55 "application" and notes that, under Rule 55(e), a default cannot be entered against the United States unless plaintiff establishes a right to relief "by evidence satisfactory to the court." Because the government files this pleading and, more important, because plaintiff submits no such evidence, no response is warranted.